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August 16, 2013

To: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

Executive Summary

This memorandum contains a report on legislation related to the California Environmental Quality Act (CEQA):

- **SB 731 (Steinberg).** This measure would: 1) establish Statewide standardized thresholds for the environmental impacts of transportation and noise for infill projects; 2) expedite disposition of legal challenges under CEQA by requiring concurrent preparation of the record of proceedings and allowing courts to issue writs of mandates limited to only the portion of environmental documents found to be in violation of CEQA; 3) revise CEQA notice and document posting requirements; and 4) clarify types of information that would require a supplemental environmental review for previously exempt projects, among other provisions. SB 731 (Steinberg) is considered the primary vehicle through which CEQA reform efforts will be pursued during this legislative session. This measure is scheduled to be heard in the Assembly Appropriations Committee on August 21, 2013.

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Overview of SB 731

SB 731 (Steinberg), which as amended on August 6, 2013, would revise the California Environmental Quality Act to:

- require the State Office of Planning and Research to prepare and propose revisions to the CEQA guidelines, on or before July 1, 2014, for certification and adoption of thresholds of significance for noise and transportation impacts for residential, mixed-use residential, or employment center projects within transit priority areas;
- provide that aesthetic impacts of residential, mixed-use residential, or employment center projects within transit priority areas would not be considered significant impacts on the environment;
- provide that adoption of the proposed thresholds of significance would not affect the authority of a public agency from establishing or adopting transportation or parking standards applicable to projects or more stringent thresholds of significance;
- require lead agencies to prepare a record of proceedings concurrently with the preparation of certain environmental documents at the request of the project applicant for specified projects;
- require a lead agency to post findings in draft form for review by the public at least 15 days prior to approval of a proposed project, and to make those findings available online;
- authorizes the 30-day statute of limitations to bring actions under CEQA to be tolled for up to 4 years by mutual agreement of all parties;
- require lead agencies to prepare or cause to be prepared an annual report on project compliance with required mitigation measures;
- specify that argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are caused by, physical impacts on the environment would not constitute a "specified event" which would trigger a supplemental environmental impact report for residential projects that are consistent with a specific plan for which an Environmental Impact Report (EIR) has been certified after January 1, 1990;

- establish procedures for a trial court to remand only portions of environmental documents found to be in violation of CEQA to reduce recirculation and litigation delays;
- establish, until January 1, 2017, the position of Advisor on Renewal Energy Facilities in the Office of the Governor to expedite renewable energy project siting; and
- authorize, upon appropriation by the Legislature, \$30.0 million for the purposes of providing grants to local agencies to implement general plans, sustainable community strategies, and smart growth plans pursuant to SB 375 (Chapter 728, Statutes of 2008).

Existing Law

The California Environmental Quality Act requires State and local agencies to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on projects that it proposes to carry out or approve and to avoid or mitigate those impacts, if feasible. CEQA also: 1) requires adoption of guidelines for implementation of CEQA by public agencies; 2) establishes a procedure for the preparation and certification of the record of proceedings in response to CEQA challenges; 3) requires a lead agency to monitor and report on project compliance with required mitigation measures; 4) exempts certain residential development projects from CEQA requirements; and 5) requires preparation of a supplemental environmental impact report for exempt residential project if, after certification of the EIR, a specified event occurs.

Analysis of SB 731

As previously reported, SB 731 (Steinberg), as introduced on February 22, 2013, stated the Legislature's intent to enact legislation revising CEQA to provide greater certainty for smart infill development, streamline the law for specified projects, and expedite the disposition of CEQA legal challenges, and establish a threshold of significance for specified impacts. As amended, SB 731 now contains more detailed language on four key issues: 1) Statewide standardized environmental threshold for the environmental impacts of traffic and noise for infill projects; 2) reforms to expedite disposition of legal challenges; 3) enhanced State-level planning to reduce CEQA legal challenges and incentivize smart planning; and 4) CEQA streamlining to expedite clean energy projects.

The Department of Regional Planning (DRP) reports that it does not support the establishment of a set of uniform thresholds for noise, transportation, and parking impacts for residential, mixed-use residential, or employment center projects within a transit priority area because it would infringe upon the County's land use decision-making authority. DRP also indicates that the proposal to deem aesthetic impacts of those projects as insignificant without appropriate analysis would compromise the integrity of CEQA. DRP notes that uses such as billboards and lighted signage are visually intrusive and often the key point of contention during the permitting process.

According to the Department of Regional Planning, SB 731 would diminish the ability of the lead agency to require appropriate mitigation measures for these impacts. Although the County has established some design standards through adoption of land use plans or community standards districts for a few communities, DRP still relies on the discretion under CEQA to regulate the aesthetic aspects of a project more comprehensively and, sometimes, beyond the limited scope of the plan or ordinance provisions. DRP indicates that it would support expanding the use of "tiering" to streamline and limit further paperwork on impact analysis whereby local land use plans that have sufficient detail and recently completed EIRs which an, at the local jurisdictions' discretion, be used to satisfy CEQA requirements.

The Department of Regional Planning reports that SB 731 would require the lead agency to prepare the record of proceedings concurrently with the preparation of CEQA documents for specific projects. The bill would also prescribe the requirements and time limits of the preparation of these documents, including online posting. DRP indicates that these requirements would likely increase costs to the County associated with staff time and resources (e.g., scanners and servers) needed to comply with these requirements.

The Department of Regional Planning indicates that it would like to see language developed to address the stated intention of the bill to allow the courts to send back for repairs only the portion of an EIR that is found to be incomplete or lacking specificity when an EIR has been successfully challenged. According to DRP, development of these provisions could significantly benefit the County's effective administration of land entitlement permitting processes and reduce delays caused by recirculation of an EIR. The DRP also noted that the establishment of clear statutory rules under which "late hits" and "document dumps" are prohibited or restricted prior to certification of an EIR would also aid the County's entitlement permitting process. A previous version of SB 731 did include intent language to prohibit "late hits" and "document dumps" prior to certification of an EIR, if the draft EIR or project has not been substantially changed; however, that intent language was deleted from the current version of the bill.

The Department of Public Works (DPW) reports that current law requires preparation of the record of proceedings concurrently with the preparation of certain environmental documents that have been approved for certain types of projects, specifically large environmentally certified infill and clean energy projects (AB 900, Chapter 354, Statutes of 2011) and the proposed Los Angeles football stadium project (SB 292, Chapter 353, Statutes of 2011). SB 731 would expand the types of eligible projects to include "projects determined to be of Statewide, regional or area wide environmental significance" and projects that would implement the Sustainable Communities Strategy pursuant to SB 375 (Chapter 728, Statutes of 2008). DPW notes that this could include the current Slauson Avenue Revitalization and Old Road over Santa Clara River projects, any bicycle plan EIR amendments, and EIRs for projects in the Santa Monica Mountains Zone and the California Coastal Zone. DPW reports this change could have a significant impact on County divisions or departments that process environmental documents which would be subject to this provision.

The Department of Public Works also indicates that the proposal in SB 731 to establish thresholds of significance for noise and transportation impacts for infill projects in transit priority areas may negatively impact the County. If the State was to adopt more stringent thresholds of significance than the County currently employs, this would place onerous mitigation requirements on projects.

The Department of Public Works notes that provisions of the bill which would require a lead agency to post findings at least 15 days in advance of project approval and to publish the notice of availability online, in newspapers, and via mail could impact the schedule for project approval and have a financial impact on the County, considering lead time and cost for those actions. DPW also indicates that the requirement that the lead agency prepare an annual report on project compliance with mitigation measures, and make that report available publicly online, would require additional departmental resources to monitor activities, and prepare and publish the report.

The California State Association of Counties (CSAC), the Urban Counties Caucus (UCC), and the Rural County Representatives of California (RCRC) have identified several issues with the bill and are seeking amendments to limit last minute comments ("data dumps") on a draft EIR which can delay a public agency's ability to consider and respond to the comments and that create costly delays to public agencies. Additionally, CSAC, UCC and RCRC are also requesting changes to make the infill exemption and streamlining process provided for housing projects under current law work for counties by easing the requirements which must be met.

SB 731 is supported by the Center for Sustainable Neighborhoods. The following groups oppose the bill unless it is amended: the Association of California School Administrators; Association of California Water Agencies; Association of California

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Healthcare Districts; California Association of Sanitation Agencies; California Association of School Business Officials; California Special Districts Association; California State Association of Counties; California State University; California's Coalition for Adequate School Housing; Center on Race, Poverty & the Environment; Coalition for Economic Survival; Communities for a Better Environment; Esperanza Community Housing Corporation; Healthy Homes Collaborative; Los Angeles Community Action Network; Rural County Representatives of California; Physicians for Social Responsibility - LA; Small School Districts' Association; Strategic Actions for a Just Economy; Three Valleys Municipal Water District, T.R.U.S.T. South LA; and Urban Counties Caucus.

SB 731 passed the Assembly Local Government Committee by a vote of 7 to 0 on August 14, 2013. This measure is scheduled to be heard in the Assembly Appropriations Committee on August 21, 2013.

The Board-approved State Legislative Agenda contains six policies related to CEQA, all of which address either air quality or land use planning issues. Generally, these policies state that the County will: 1) oppose legislation which would provide broad and categorical CEQA exemptions; 2) oppose legislation that would grant private projects exemptions from the requirements of CEQA; 3) support legislation which would provide public projects expedited judicial and administrative review procedures under CEQA; 4) support legislation which would provide narrow and tailored exemptions for essential public projects or projects that provide vital public services; 5) support legislation that would preserve the County's flexibility in making CEQA determinations as they relate to the State's greenhouse gas emission reduction efforts; and 6) support legislation that provides urban counties with the same authority that cities have under current law to exempt infill projects under CEQA.

However, the broad nature of SB 731, as well as specific issues and concerns raised by the departments regarding some of the provisions of the bill, do not fall into any of the above stated Board-adopted policies. **Therefore, the decision to support or oppose SB 731, or specific provisions of the measure, is a matter for Board policy determination.**

This office will continue to analyze and monitor SB 731 and will work with the appropriate deputies to make recommendations to the Board as necessary.

WTF:RA
MR:VE:AO:ma

c: All Department Heads
Legislative Strategist